

PUBLIC RECORD

**STAUGHTON'S**International Trade &  
Anti-Dumping Advisory Group

ABN 40 156 647 988

July 15<sup>th</sup> 2014.

Mr Matthew Williams  
Case Manager  
Anti Dumping Commission  
1010 Latrobe Street  
DOCKLANDS, 3008

Via email: [operations3@adcommission.gov.au](mailto:operations3@adcommission.gov.au)**PUBLIC RECORD VERSION****RE: INVESTIGATION No 234.****Alleged Dumping of Certain Alloy Steel plates ex JFE ,Japan.****Bisalloy Steels Pty Ltd-Applicant (Bisalloy)****A RESPONSE to****the APPLICANT'S PUBLIC RECORD CLAIMS****&****The Commission's Preliminary Affirmative Determination of 19<sup>th</sup> May 2014**

Dear Mr Williams,

We write in relation to the Commission's Investigation No 234 on imports of certain Alloy steel plate being in response to various claims, assertions, allegations by the applicant Bisalloy, and , also, to advise you that because of the now obvious time constraints, of our concern of not being afforded due process.

Given the Commission's intention to publish an SEF no later than 28<sup>th</sup> July 2014, [REDACTED][REDACTED]  
[REDACTED], [REDACTED]  
[REDACTED]  
[REDACTED] [impact of case timeframe on due process]

Without having had prior opportunity to test the Commission's methodology JFE cannot accept the preliminary determination for JFE exports based on the outline in Para 7.5.1 of PAD No 234 dated 19<sup>th</sup> May 2014, which, given the fact that determination was published prior to any positive verification by the Commission, may be viewed as being a pre-set, but an objectionable, outcome to appease the applicant's stated expectations and as stated in the previous paragraph, JFE and our other affected interests have had no opportunity to challenge the preliminary accuracy or methodology employed by the Commission.

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We do note that two of the reasons given for the SEF date being extended to the 28<sup>TH</sup> July 2014 were (1) the unprecedented demand on the Commission's resources and (2) the delay in receiving Exporter responses. In regard to the latter we would like to record the fact that in our opinion JFE submitted a complete and timely response by the revised due date of 7<sup>th</sup> March 2014 kindly granted by the Commission, that being the same due date granted to SSAB Emea AB.

We totally reject the applicant's criticism of the Commission as expressed in its meeting with the Commission on 1<sup>st</sup> May 2014, that the 'apparent latitude given to exporters is concerning' in that factually, JFE was duly entitled to the brief extension and JFE 'S responses could not have contributed to any 'delay'.

Bisalloy's application however would not have alleviated the Commission's obvious workload.

In relation to another issue raised by the applicant in that meeting the writer of this communication acknowledges responsibility for the JFE submission of the 11<sup>th</sup> March 2014 that Bisalloy referred to.

**Introduction:**

By way of introduction our submission to the Commission is that the applicant has been unable to demonstrate serious injury caused by our alleged dumped imports and that our imports under consideration are not the cause of the applicants problems . The imports in question are a symptom and a logical corollary of:-

- **The applicant's unwillingness or inability to produce in the normal course of business certain thicknesses and lengths of its brand of wear and structural grade plates;**
- **It's patent and increased reliance on Australia's only steel plate producer, Bluescope, for supply of its 'greenfeed' , particularly given the dumping and subsidy measures now applying to imports of 'greenfeed' from China, Korea, Taiwan, and Japan;**
- **It's conventional 'piece by piece' processing operation of externally sourced 'greenfeed' compared to the new technology continuous process developed and enhanced in JFE's fully integrated manufacturing operation for alloy steel plates;**
- **It's restrictive domestic marketing, distribution policy and its uncompetitive pricing policy;**
- **It's selected distributors, accounting for 80% of its relevant domestic sales, not having the enhanced 'workshop' capabilities of a 'Total Steel' or a ' Vulcan Steel' , being in-house capabilities 'beyond' the normal slitting and blanking capabilities required in order to service the '24/7' separate market of R&M for the domestic mining and resources sectors;**

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- **It's challenge on high distribution costs in transporting stock to Western Australia (by ship) and Queensland mainly due to the dispersed nature of the Australian domestic market, and especially the mining and resources sector; imports clearly have a competitive advantage in respect of Western Australia, Queensland and Northern Territory;**
- **It's need to supply the domestic niche armour plate market, a separate market to JFE's goods, and export to its Indonesian and Thailand owned distribution outlets and other markets via agents, all of which according to Bisalloy's 2013 annual and December 2013 reports, have been below expectations;**

**In our opinion it is demonstrable that Bisalloy Steels Pty Ltd is attributing to the JFE exports the problems and injury caused by these other factors which also include, and resulted, in self-inflicted injury, eg; Bisalloy,s process has a cycle time of days and Its recently introduced new business model ,BisExpress, a stockholding arm which moved Bisalloy away from its just-in-time model to producing for stock on the ground when the market demand changed.**

#### **Our Opinion:**

Despite the fact that 'Bisalloy' , based on ABS data, imported around 6700 tonnes of greenfeed from China in year 2013, we consider that this investigation is the direct consequence of the ADC's recent dumping and subsidy measures imposed on imports competing with Bluescope Steel 'steel plates' (ACDN No 2013/18) and which includes the greenfeed from China, Korea or Japan.

It's our understanding from industry sources that Bluescope maybe actually sponsoring this 'Bisalloy' action and in our opinion Bluescope has been exercising its obvious market power to micro manage the competitive market supply of steel products for Australian steel users .

According to Bisalloy, its greenfeed is especially produced for its processing operation (said to be the alloy composition/intellectual property rights). Bisalloy is the only Bluescope domestic customer for this greenfeed and Bluescope is one of Bisalloy's three to four major distributors of its output.

Whilst greenfeed imported from China now attracts subsidy duty the real concern with Bisalloy's JV operation in China is that Bisalloy can obviously import Q&T plates from the China JV( for example) into Western Australia or Queensland, and the local purchaser would have no way of knowing the origin of that plate. Based on ABS data for year 2013, there appears to have been low priced imports of Q&T plate into those states of China origin.

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**Market Supply:**

Based on ABS data the import volume for year 2013 would also indicate that the Australian market depicted in the Bisalloy visit report,( para 4.6) is understated.

We understand the year 2013 estimated Market supply to have been around 70k tonnes.

**Merit of Application:**

Whilst 'Bisalloy' has an obvious entitlement to initiate this investigation, in our view this action by Bisalloy is not only considered to be an opportunistic attempt to have a revenue tax imposed on industry inputs for the Australian export sector comprising the mining and resource companies, but given the Bisalloy 2013 Annual Report and half year report to December 2013, it is , in our opinion considered capricious as Bisalloy seems to base its claimed injury more on their views and theories rather than any fact based evidence. We do include specific examples further on in this document.

**Importance of Mining, Processing & Mining services sector:**

The mining and resource sector, being 70% of Bisalloy's domestic sales, has competed overseas without any specific Government subsidies and factually, over the past three years to June 2013, the mining **processing and mining services sectors** contributed over half of Australia's domestic output growth while the rest of the Australian economy is reported to have grown only 1% or 2% per year.

As we expressed previously, this application is viewed as Bisalloy & Bluescope wanting the Government to impose a revenue tax on JFE imported industry inputs so as to force the processing and mining services sector to remedy its problems by buying more of its range of products. That is considered a clear case of self interest when the need is to prevent any further adverse impact on the far wider economy that contributes far greater gross value add than Bisalloy's\* processing operation. \*Bisalloy's 2013 Annual Report describes its operation as being a processor.

**Ministerial Obligation:**

The Minister, in this case the Parliamentary Secretary, on our experience and understanding , has the discretion to effectively make any decision. For example 'he' has the discretion 'to make different provision with respect to different matters or different classes of matters' but more specifically s269TAE (2A) of the Australian anti- dumping legislation states that the Minister (Parliamentary Secretary) **MUST** consider if the following factors have caused the claimed injury:-

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S269TAE (2A) cont'd:

- (a) The volume and prices of imported like goods that are not dumped; or
- (c) Contractions in demand or changes in patterns of consumption; or
- (d) Restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
- (e) Developments in technology ; or
- (f) The export performance and productivity of the Australian industry;

And 'any such injury or hindrance **MUST not be attributed to the exportation of those goods'**

Similarly s269 TAE (2 C) requires that the Minister **SHOULD** consider the cumulative effect of those exportations and as such the Parliamentary Secretary should be advised by the Commission that the majority of JFE exports to Australia enter a **separate** market to **ALL of** Bisalloy's domestic sales, which are accounted for by:-

- 80% of sales to selected Distributors including the major 'Nationals'-- [REDACTED]; [REDACTED]; [REDACTED]).
- 20% of sales to OEM's and large Fabricators

**Note-emphasis added.**

The 20% of sales to OEM's and large fabricators would , we understand, include 'Bisalloy's' sales of 'Military' -defence/armour -plates which need to be treated as being a separate, niche, market to that supplied by JFE and which according to Bisalloy's 2013 Annual Report account for 10% of sales.

Based on JFE's export volume during the I.P of [REDACTED] tonnes ,and on information provided the Commission by Total Steel and Vulcan, less than [REDACTED] tonnes of those exports entered what is termed the distributor market, being what we described as full plate sales by only Total Steels.

**We strenuously maintain that the volume of JFE exports to Australia , at least [REDACTED] tonnes , do not enter the Australian distributor market in competition with Bisalloy's 80% and 10% of domestic sales.**

**Instead, the volume JFE exports enter the very separate market of on -demand, made to order, Repair and Maintenance steel 'articles' demanded by the mining and resource sector and the Commission should take into account that JFE has been a responsible, reliable, important supplier to the Australian mining and resource sector for at least 20 years.**

We also note that based on ABS import data for year 2013, around 39,900 tonnes of relevant goods were imported from the three Countries under consideration and around [REDACTED] tonnes were not relevant.

The [REDACTED] tonnes referred to as being the only full plate sales of JFE goods should be compared to the other [REDACTED] tonnes imported.

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**Conclusions & Challenge:**

It is clear that the market demand for OEM and Military requirements has decreased from 2012 to 2013 and most likely decreased again since January 2014.

However the separate market that Total Steel and Vulcan supply, namely the R&M requirements of the mining and resource sectors, as acknowledged by Bisalloy, is increasing.

Para 4.5 of the Bisalloy visit report-“ the mining industry is now focused on refurbishment and repair of mining equipment and infrastructure”

Bisalloy's major national distributors obviously possess plate processing equipment and Southern Steel, for one, also offers welding, forming, drilling services. It is our understanding that the ACCC has identified in its consideration of Bluescope acquiring Onesteel/Arrium's distribution business (excluding plate) that the processing business is a separate market as not all distributors possess processing equipment. Whilst the degree of processing capability varies from State to State, Total Steel and Vulcan Steel however are considered to have dedicated processing and production equipment that is operative 24/7, 12 months of the year, for essentially the R & M demand of the mining related sector. They do not close down over the Australian Christmas New Year period.

**Expectation:**

Our understanding and that of our affected interests, is that the burden of proof, particularly in regard to the market analysis, causation factors and claimed material injury, rests with the Commission, and that its findings and recommendations need to be based on positive evidence rather than subjective and speculative claims.

We and our interests have confidence in both the Commission's fact finding process and that its findings and recommendations will be evidenced based and included in the report to the Parliamentary Secretary.

The Commission has already undertaken a verification and site visit to Total Steel and both MISI and JFE, in our opinion, have lodged complete and timely responses to the Exporter Questionnaires and all of our affected interests are looking forward to the JFE verification visit report from the Commission.

Vulcan Steel has also provided the Commission with details and information on its imports from JFE which demonstrate that none of its JFE goods enter the Australian distributor market.

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### Total Steel (TSA) Import Transactions:

Bisalloy claim that in relation to TSA export prices:-

- (1) They are related party transactions and cannot be relied upon for establishing actual export prices; and,
- (2) The market intelligence available to Bisalloy confirms that market prices for Q& T steel plate do not reflect declared FOB export prices as published by the ABS; and as,
- (3) JFE exports have to compete with the Swedish exporter's prices, that renders the JFE export prices as being unreliable.

### Our responses are:-

- (1) As previously stated, the ADC has undertaken a verification visit to TSA which included the verification of TSA actual money price paid for import and domestic transactions;
- (2) The ADC verification substantiated prices paid for the JFE exports;
- (3) The exporter of TSA goods in question is not related to TSA;
- (4) ABS published FOB prices are not the actual money prices paid for exports, but, as Bisalloy should know, being both an importer and exporter itself, the ABS data it 'relies' on in respect of FOB import prices, is simply a notional value for purposes of calculating substantive duty amounts which in our case is 5%.

### Our Claims:-

- (1)The only relevant price for both import purchases and subsequent sales for domestic consumption is the actual money price paid or received and Bisalloy's reliance on either notional values or so called market intelligence is simply unreliable and an attempt to persuade the Commission for imposing pre-emptive provisional measures.
- (2)TSA has been operating for over three decades and its ownership has been general knowledge within the wider sectors of Australian industry. **Additionally TSA applied for supply from Bisalloy in June 2006 which included details of ownership etc. TSA did not 'exclusively' source from Bisalloy because Bisalloy's plate was available at a lower price from its distributor, Bluescope, even when allowing for the obvious cost of possession factor incurred by distributors.**
- (3)As stated previously only █% or around █ tonnes entered domestic consumption as 'full plate' sales which, in our opinion, were the only JFE exports that could have competed with Bisalloy and the other market suppliers in the distribution market.
- (4)We maintain our claim that the underlying demand for ALL of these plates in Australia in the I.P. was estimated to be around 70kt tonnes p.a., meaning the relevant JFE Australian sales comprised around ONLY █% of the total estimated supply for the relevant distributor market.

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**Claimed Price Effects:-Price Bait:**

To our knowledge the Commission has not undertaken any price undercutting analysis based on factual verified transaction prices.

Para 8.1. Bisalloy Visit report:

Bisalloy stated “that it routinely monitors and compares its selling prices against import prices , both through ABS import statistics and its own market intelligence.”

We have already commented on Bisalloy’s apparent reliance on ABS Data for determining FOB values and for the reasons provided on how the JFE exports enter Australian domestic consumption we totally reject Bisalloy’s assertion of ‘lower’ Japanese market prices being relevant to JFE.

**The reality is that Bisalloy provided the Commission ‘information on its understanding’ of offer prices in the Australian prices.**

We respectfully submit that offer prices are hardly actual transaction prices and given that 80% of Bisalloy’s sales are to its distributors in what is clearly a competitive market environment, there would have to be some ‘price bait’ exercised by its own, selected, but competing distributors.

As the Commission also notes the verbal and written price offers relied on by Bisalloy were based on Bisalloy’s standard ‘dimensional’ market offers.

It is not known at this stage if, however, the Commission has since undertaken any price undercutting analysis based on factual transaction prices but in the case of JFE goods, unlike the piece by piece trace afforded Bisalloy’s operation, our position is that less than ■ tonnes of JFE exports can be actually traced from export to local consumption, and that the gross value add performed by TSA and Vulcan on around ■% of JFE exports renders the issue of price undercutting a non event for JFE exports.

Whilst the conventional policy on dumping is to enforce ‘cumulation’ of exports on a country rather than on a company basis, we submit that for reasons previously stated, there is the discretion to make provision for treatment of separate matters etc.



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**PUBLIC RECORD VERSION****Causality Factors:**

On the question of 'causality' we do agree with the following Bisalloy 2013 AGM comments on the deteriorating market conditions that resulted in falls on both Bisalloy's revenue and net profit:-

" A slowdown in Chinese manufacturing activity along with increased uncertainty driven by volatility in prices for resources , has led to a significant reduction in spending on capital projects and a tighter focus on cost management by the major resource companies. "

"The strong Australian dollar and a fall in prices for Australia's major commodities, specifically iron ore and coal, has provided significant challenges to the Australian steel industry."

***-Refer page 3, 2013 Annual Report.***

**Australian Dollar:**

In our view the Australian Dollar was allowed to float by the Australian Government back in the 1980's and this factor has been in play for probably all of Bisalloy's existence, and especially given that Bisalloy is both an importer and exporter, Bisalloy should have developed an appropriate, effective strategy to deal with this reality.

The reality is that the Australian exchange rate only assists in Bisalloy keeping costs down-it is both an importer and an exporter and based on ABS data, it would appear to import more than it exports.

It is our understanding that in respect of its importing activity Bisalloy has been both the beneficiary and loser on currency movements and given its experiences its management should be well versed in the opportunities and risks resulting from currency movements.

**Australian Market Sectors**

Another comment on page 5 of the Bisalloy 2013 Annual Report on "Likely Developments" that we believe has been demonstrated during the I.P was as follows:-

"The Group expects the sectors into which it supplies quench and tempered steel plate will remain subdued during the first half of the financial year although there are expectations of an improving outlook as the rate of repairs and maintenance increases from the newly developed resource projects."

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Demand from the repairs and maintenance sector, being a separate local market, has increased and this is the demand that TSA & Vulcan have the demonstrated capability to satisfy on 'all year 24/7' basis which differentiates TSA & Vulcan from both the Bisalloy un-processed ex mill steel plates and the processed steel plates of its selected distributors.

Additionally there is the dimensional limitation issue of Bisalloys standard market offers.

#### **Substitute Goods:**

In its application Bisalloy described hot rolled plate produced by the TMCP technology as being a cheap substitute introduced during the GFC and for use mainly on truck bodies.

In the Commission's visit report on Bisalloy, it is again stated in para 8.3.3 , that the TMCP produced plates are 'inferior' ; 'only available as a structural grade'; 'limited to thicknesses up to around 13mm'; 'was adequate and cheap';, and 'has been available in Australia since around 2006 and it has not observed a significant market shift to this product'

We do not agree that the Bisalloy views are correct and they certainly do not apply to JFE's exports to Australia.

JFE has provided a detailed, exhaustive outline on its products exported to Australia and its production technology which we submit, compared to Bisalloy, is new, advanced technology.

Our understanding of JFE's manufacturing operation is that its TMCP technology is used to produce most of its exports to Australia including:

- The Everhard LE series thickness [REDACTED] mm
- Hiten 780 LE series thickness range [REDACTED] mm

A detailed explanation of JFE's TMCP technology has been provided to the Commission.

We also take this opportunity to express our disappointment that no member of the Commission that visited Bisalloys conventional Q & T process operation that has a cycle time of days was 'available' to visit the JFE, fully integrated continuous operation.

#### **Exemptions:**

When examining Bisalloy's product range and dimensional limitations it can create the impression that Bisalloy's claimed capability is more about what it could do rather than what it can do. When comparing their standard offers with JFE's product range we are reminded of two themes from some 'olden days' Australian advertisements, namely:-

- "Oils aint oils" and " This goes with That"

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We understand that a basis for applying for an exemption is that the local producer needs to agree with the application. Given that any specific agreement is unlikely to be provided by Bisalloy, we intend to proceed with applications on the basis that we have 'implied agreement' by way of documentation from Bisalloy that indicates:

- It is unable to offer product > [REDACTED] mm thickness
- Its offer prices were higher than comparable prices from Bluescope (distributor)

The thickness issue is concerning in that a Commercial Tariff Concession Order ( TC 9605765- duty free) for such goods applied from 7/6/1996 to 10/10/2013 when Bisalloy had it revoked (in transit provisions applied)

The documentary response from Bisalloy on product thickness > [REDACTED] mm that we refer to was received subsequent to the revocation date.

**Exclusions:**

We note from the Bluescope plate case-para 3.4.2 of SEF 198-that Bisalloy sought to have a redefinition of the goods description to reflect the separate markets that existed for Q& T greenfeed and non –alloy steel plate.

In reply the Commission stated that there were no provisions in the ACT to redefine goods description or provision in the ACT to terminate or withdraw in respect of particular subcategories of the goods under consideration..

We respectfully submit that the Minister (Parliamentary Secretary) has the discretion to 'terminate or withdraw in respect of particular subcategories of the goods under consideration".

Our question to the Commission however is on what authority has the Commission, and thus the ACBPS, included goods classified Tariff Item [REDACTED] in the provisional measures announced on 19<sup>th</sup> May 2014.

We submit that by definition, goods properly and legally classified Tariff Item [REDACTED] cannot be included in the goods description for the goods under consideration and need to be excluded from this investigation.

Also, but for different reasons, JFE is requesting that goods having a length > 9metres should be excluded from the 'dumping analysis'.

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### Summary

#### Real World Situation:

We consider the market for QT steel plates to be essentially a global market driven by the demand activity of globally based OEM equipment manufacturers for the mining, resource and industrial machinery sectors.

The relevant market sector however, is obviously the Australian market which we claim has two distinct demand drivers, namely OEM equipment manufacturers, and the repairs and maintenance requirements of the operating mining and resource sectors.

The differences are clearly demonstrable.

OEM equipment manufacturers depend on new capital investment and have the benefit of sourcing 'bulk plate' within orderly lead times whereas the repairs and maintenance demand requires immediate delivery of 'made to order' parts etc.

As stated above, this is the 'all year 24/7' sector serviced by TSA & Vulcan and contrary to the demand from OEM's the repairs and maintenance sector demand has increased during the I.P.

The issue of security of supply on both Bluescope's 'normal' non alloy steel plate and Bisalloy's high alloy QT steel plates in a timely and cost effective manner should be of real concern to Australian end use customers as both Bluescope and Bisalloy have limited production capabilities, and given the experiences of, especially, years 2007, 2008, when Bluescope had its customers on 'demand management' (code for allocation) meant that Bisalloy's product was also on allocation.

ABS export data for year 2013 indicates that Bisalloy exported around 5400 tonnes including the following:

- To Indonesia: 2670 tonnes @ a weighted average FOB A\$ 1791 per tonne
- To Thailand: 820 tonnes @ a weighted average FOB A\$ 1818 per tonne  
250 tonnes @ a weighted average FOB A\$ 5440 per tonne ?

As stated previously Bisalloy also produce armour steel plate which is a separate niche market. Given a nominal production capacity of 65kt p.a. it means Bisalloy could theoretically supply an optimum 60,000 tonnes of QT plates to Australian market, which still suggests a market shortfall of around 10,000 tonnes on our market estimate for 2013. Imports are needed to supply the market and in our opinion, Bisalloy is now becoming more captive to Bluescope Steel on supply of its greenfeed steel plate since Bluescope's initiation of dumping and countervailing duties on certain imports of steel plates has, based on industry information and in our opinion, probably resulted in Bluescope sponsoring' this Bisalloy application.

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For any further information regarding the claims ,understandings and opinions expressed in this document please contact the writer.

In terms of having an interest in this investigation we are the authorised representatives of:

- Total Steel of Australia Pty Ltd
- Vulcan Steel
- JFE Steel Corporation

As stated above, please contact the writer for any further information concerning this communication.

Thank you for your consideration.

Regards



M J Howard